



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 6, 2011

**Joseph Sandler, Esq., Neil Reiff, Esq.,
and Stephen Hershkowitz, Esq.
Sandler, Reiff & Young, PC
300 M Street, SE, Suite 1102
Washington, DC 20003**

**RE: MUR 6275
Massa for Congress and
Beverly Massa, in her official
capacity as treasurer
Eric Massa**

Dear Messrs. Sandler, Reiff, and Hershkowitz:

On April 23, 2010, the Federal Election Commission notified your clients, Massa for Congress and Beverly Massa, in her official capacity as treasurer ("the Committee"), and Eric Massa, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on December 17, 2010, found that there is reason to believe Massa for Congress and Beverly Massa, in her official capacity as treasurer, violated 2 U.S.C. § 434(b), a provision of the Act, by failing to report debts and obligations in connection with the Committee's \$40,000 payment to Joseph Racalto on March 4, 2010. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

The Commission was equally divided on whether to find reason to believe Massa for Congress and Beverly Massa, in her official capacity as treasurer, and Eric Massa violated 2 U.S.C. § 439a(b) in connection with the Committee's \$31,896.42 payment to GMAC on March 3, 2010. A Statement of Reasons providing the basis for the Commission's decision will be forthcoming when the entire file in this matter closes.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with answers to the enclosed questions and document requests within 30 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In

15044370411

MUR 6275 (Massa for Congress)
Joseph Sandler, Esq., Neil Reiff, Esq.,
and Stephen Hershkowitz, Esq.
Page 2

the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If your clients are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Kasey Morgenheim, the attorney assigned to this matter, at (202) 694-1650.

On behalf of the Commission,


Cynthia L. Bauerly
Chair

Enclosures
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENTS:** Massa for Congress and Beverly Massa, in her **MUR 6275**
6 official capacity as treasurer
7

8
9 **I. GENERATION OF MATTER**

10
11 This matter was generated by a complaint filed with the Federal Election Commission by
12 Kenneth F. Boehm. *See* 2 U.S.C. § 437g(a)(1).

13 **II. INTRODUCTION**

14 This matter involves allegations that former Congressman Eric Massa, his campaign
15 committee, Massa for Congress ("the Committee"), and Joseph Racalto, Massa's Congressional
16 Chief of Staff, violated the Federal Election Campaign Act of 1971, as amended ("the Act") in
17 connection with a payment made by the Committee days before Massa's resignation from
18 Congress in March 2010. The complaint alleges that a \$40,000 payment by the Committee to
19 Joseph Racalto for a "campaign management fee" one day before Massa announced his
20 resignation may have violated the Act's personal use prohibition because Racalto may not have
21 performed campaign work. *See* 2 U.S.C. § 439a(b)(1). The complaint suggests the possibility
22 that Racalto agreed to defer payment for fifteen months until he learned that Massa would not
23 stay in office; in which case, the complaint contends that the Committee should have reported the
24 agreement as a debt or obligation on its disclosure reports. *See* 2 U.S.C. § 434(b).

25 The response from the Committee ("Committee Response") asserts that the complaint has
26 not alleged a specific violation of the Act, but claims that \$40,000 was not appropriate payment
27 for Racalto's work for the campaign and that the payment was not authorized. The Committee
28 Response explains that the Committee believes that some amount of compensation is

1 appropriate, but that it has asked Racalto to return the payment in order for the Committee and
2 Racalto to agree on an appropriate amount.

3 Based on the available information, the Commission finds reason to believe that Massa
4 for Congress and Beverly Massa, in her official capacity as treasurer, violated 2 U.S.C.
5 § 434(b) by failing to report debts and obligations in connection with the \$40,000 payment to
6 Joseph Racalto.

7 **III. FACTUAL AND LEGAL ANALYSIS**

8 The Committee's 2010 April Quarterly Report includes a \$40,000 payment to Joseph
9 Racalto, Massa's Congressional Chief of Staff, on March 4, 2010 for "campaign management
10 fee." Relying on statements in press articles, the complaint argues that Racalto did not perform
11 significant campaign work. Complaint at 3. A press article attached to the complaint reported
12 that four current and former Massa campaign staffers said that that they were surprised by the
13 payment and were unaware that Racalto was performing any substantial campaign work. See
14 Carol D. Leonnig, "Massa Gave \$40,000 to Aide Before Resigning as Congressman,"
15 *Washington Post*, April 17, 2010 (Complaint Exhibit B) ("Leonnig, April 17, 2010"). The
16 complaint also points to statements by Camilla McKinney, identified in press articles as
17 Racalto's attorney, that the payment was part of a deferred compensation arrangement.
18 Complaint at 2-3 and Leonnig, April 17, 2010. If a deferred compensation arrangement existed,
19 the complaint contends that the Committee should have reported the agreement as a debt or
20 obligation on its disclosure reports. Complaint at 3. Finally, the complaint questions the
21 legitimacy of the payment because press accounts reported that Racalto filed a complaint against
22 Massa on March 23, 2010 alleging sexual harassment. *Id.* In April 2010, several press articles,
23 including those cited in and attached to the complaint, reported that Racalto was a central figure

1 in allegations that Massa sexually harassed his aides, and questioned the timing of the payment,
2 given Massa's resignation announcement and the fact that Racalto had filed a sexual harassment
3 complaint against Massa with the House of Representatives Ethics Committee. *See* Leonnig,
4 April 17, 2010; Stephanie Condon, "Rep. Eric Massa Resigns, Takes Responsibility for
5 Harassment Charges," CBS News Political Hotsheet, March 5, 2010, available at
6 http://www.cbsnews.com/8301-503544_162-6270838-503544.html.

7 There are significant unresolved factual issues about the circumstances surrounding the
8 \$40,000 payment. The Committee Response states that political committees may permissibly
9 use excess campaign funds to employ staff or consultants and asserts that the complaint has not
10 alleged a specific violation of the Act. Committee Response at 3-4. However, the Committee
11 Response does not assert that the \$40,000 payment to Racalto was appropriate and in fact
12 suggests the opposite:

13 The Committee acknowledges that Mr. Racalto was entitled to some amount of payment
14 for services to the campaign. The Committee has publicly stated that the amount of the
15 \$40,000 was not "authorized" by Mr. Massa and has demanded that Mr. Racalto return
16 the funds and that the committee and Mr. Racalto mutually agree on an appropriate
17 amount of compensation for his work for the campaign.¹

18
19 Committee Response at 4. Eric Massa's sworn declaration in the response is silent on the issue
20 of the payment to Racalto.

21 A press article attached to the complaint included statements by Milo Silberstein, who is
22 identified as Massa's attorney, that there was never a contract between Racalto and the
23 Committee and that the \$40,000 amount was determined solely by Racalto. *See* Carol D.
24 Leonnig, "Massa Alleges Fraud in Campaign Payment, Salary Increase" *Washington Post*,

¹ It is unclear why the Committee Response is framed in terms of the Committee's public statement.

1 April 18, 2010 (Complaint Exhibit C). Another press article attached to the complaint reported
2 that Racalto's attorney stated that the \$40,000 amount was determined under contract, which
3 established quarterly amounts that Racalto would be paid, but stated that she could not provide a
4 copy of the contract or the date the contract was signed. See Leonnig, April 17, 2010.

5 The Committee's disclosure reports suggest that the \$40,000 payment to Racalto fell
6 outside of the Committee's usual pattern of compensation for campaign work. The Committee's
7 disclosure reports include frequent disbursements to individuals for "payroll" or "consulting
8 fee," but the disbursements are smaller, ranging between approximately \$1,000 to \$7,000, and
9 are made on a periodic basis, either monthly or quarterly, rather than in a lump sum. In addition,
10 several of the Committee's disclosure reports covering the time period when Racalto was
11 purportedly performing campaign work disclose debts and obligations to individuals and firms
12 for legal and consulting services, but none to Racalto. Although Racalto may have been
13 performing campaign work from November 2008 through March 2010, his compensation was
14 not disclosed until the Committee made the \$40,000 payment on March 4, 2010.

15 The available information suggests that Racalto may have performed work for the
16 campaign from November 2008 through March 2010 but was not paid until March 2010.
17 Additionally, the Committee acknowledges that Racalto was entitled to some amount of payment
18 for services to the campaign. Therefore, the Committee may have failed to disclose a deferred
19 compensation arrangement with Joseph Racalto in violation of the Act. Political committees are
20 required to report the amount and nature of outstanding debts and obligations owed. 2 U.S.C.
21 § 434(b)(8). Commission regulations specify that a debt or obligation, including a loan, written
22 contract, written promise or written agreement to make an expenditure over \$500 must be
23 reported as of the date the obligation is incurred, or in the case of salary or any other regularly

